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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.223/2005

Kalika Prasad S/o Daya Lal
Versus
State of Rajasthan

Date of Judgment :::: 25th April, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Anil Upman, Advocate, for
Shri Rajeev Sogarwal, Counsel for appellant
Shri Arun Sharma, P.P., for the State

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By the Court:-

The matter has been listed for orders on the second application for suspension of sentence, but, on the request of learned counsel for both the parties, the appeal itself is heard finally and being disposed of.

Accused-appellant Kalika Prasad S/o Daya Lal has challenged the impugned judgment and order dated 8.11.2004 passed by the Special Judge, N.D.P.S. Cases, Gangapur City, whereby he has been convicted and sentenced under Section 8/18 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act, 1985') to undergo five years rigorous imprisonment and a fine of Rs.30,000/- (Rupees thirty thousand only); in default of payment of fine, to further undergo one year

additional rigorous imprisonment.

The learned counsel for the appellant, Shri Anil Upman and Shri Rajeev Sogarwal, argued only one point regarding reduction of sentence of the accused-appellant looking to the quantity of contraband recovered in the present matter. The charge against the accused was that opium weighing 1 kilogram and 400 gram was recovered from his possession. The trial court convicted and sentenced the accused-appellant as mentioned above. The order of conviction has not been challenged by the learned counsel for the appellant and rightly so in view of overwhelming evidence in the case, therefore, it is not necessary to narrate the facts of the case.

The learned counsel for the appellant contended that the legislature itself amended the provisions of the NDPS Act, 1985, and while exercising the powers conferred by clauses (viia) and (xxiiia) of Section 2 of the NDPS Act, 1985, a Notification S.O./1055(E) dated 19.10.2001, has been issued whereby small and commercial quantity have been notified and according to the Table appended with the NDPS Act, 1985, the small quantity of the opium mentioned at Serial No.92 of the Table is 25 gram and commercial quantity has been notified as 2.5 kilogram. The maximum sentence punishable for small quantity is six months rigorous imprisonment, whereas up-to commercial quantity i.e. 2.5 kilogram, the maximum sentence provided is 10 years rigorous imprisonment. The trial court has awarded 5 years rigorous imprisonment in the present case. The

appellant is said to be in jail for last more than 4 years.

The prayer has been made for reduction of sentence of imprisonment of the appellant to a period of imprisonment already undergone by him, but, after considering all the facts and circumstances of the case, I am not inclined to allow the prayer of the learned counsel for the appellant to reduce the sentence of imprisonment up-to a period of imprisonment already undergone by the appellant, but, considering all the facts and circumstances of the case and looking to the quantity of contraband recovered in the present matter, I am of the view that ends of justice will meet if the sentence awarded by the trial court is reduced to a period of 4 years and 4 months rigorous imprisonment and a fine of Rs.15,000/- (Rupees fifteen thousand); in default of payment of fine, to further undergo 2 months additional rigorous imprisonment.

Consequently, the appeal is partly allowed. The conviction of the accused-appellant under Section 8/18 (c) of the NDPS Act, 1985, is maintained, but his sentence awarded by the trial court is reduced to a period of 4 years and 4 months RI and fine of Rs.15000/- (Rupees fifteen thousand); in default of payment of fine to further undergo 2 months additional rigorous imprisonment.

(Narendra Kumar Jain) J.